

1 **Rule 3-111. Performance evaluation of active senior judges and court commissioners.**

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3 **Intent:**

4 To establish a performance evaluation, including the criteria upon which active senior judges
5 and court commissioners will be evaluated, the standards against which performance will be
6 measured and the methods for fairly, accurately and reliably measuring performance.

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8 To generate and to provide to active senior judges and court commissioners information about
9 their performance.

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11 To establish the procedures by which the Judicial Council will evaluate and certify senior judges
12 and court commissioners for reappointment.

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14 **Applicability:**

15 This rule shall apply to presiding judges, the Board of Justice Court Judges and the Judicial
16 Council, and to the active senior judges and court commissioners of the Court of Appeals,
17 courts of record and courts not of record.

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19 **Statement of the Rule:**

20 **(1) Performance evaluations.**

21 **(1)(A) Court commissioners.**

22 (1)(A)(i) On forms provided by the administrative office, the presiding judge of a district
23 or court level a court commissioner serves shall complete an evaluation of the court
24 commissioner's performance by June 1 of each year. If a commissioner serves multiple
25 districts or court levels, the presiding judge of each district or court level shall complete an
26 evaluation.

27 (1)(A)(ii) The presiding judge shall survey judges and court personnel seeking feedback
28 for the evaluation. During the evaluation period, the presiding judge shall review at least five
29 of the commissioner's active cases. The review shall include courtroom observation.

30 (1)(A)(iii) The presiding judge shall provide a copy of each commissioner evaluation to
31 the Judicial Council. Copies of plans under paragraph (3)(G) and all evaluations shall also
32 be maintained in the commissioner's personnel file in the administrative office.

33 **(1)(B) Active senior judges.** An active senior judge's performance shall be evaluated by
34 attorneys as provided in paragraph (3)(A) and by presiding judges and court staff as
35 provided in paragraph (3)(B).

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37 **(2) Evaluation and certification criteria.** Active senior judges and court commissioners shall
38 be evaluated and certified upon the following criteria:

39 (2)(A) demonstration of understanding of the substantive law and any relevant rules of
40 procedure and evidence;

41 (2)(B) attentiveness to factual and legal issues before the court;

42 (2)(C) adherence to precedent and ability to clearly explain departures from precedent;

43 (2)(D) grasp of the practical impact on the parties of the commissioner's or senior judge's
44 rulings, including the effect of delay and increased litigation expense;

- 45 (2)(E) ability to write clear judicial opinions;
- 46 (2)(F) ability to clearly explain the legal basis for judicial opinions;
- 47 (2)(G) demonstration of courtesy toward attorneys, court staff, and others in the
- 48 commissioner's or senior judge's court;
- 49 (2)(H) maintenance of decorum in the courtroom;
- 50 (2)(I) demonstration of judicial demeanor and personal attributes that promote public trust
- 51 and confidence in the judicial system;
- 52 (2)(J) preparation for hearings or oral argument;
- 53 (2)(K) avoidance of impropriety or the appearance of impropriety;
- 54 (2)(L) display of fairness and impartiality toward all parties;
- 55 (2)(M) ability to clearly communicate, including the ability to explain the basis for written
- 56 rulings, court procedures, and decisions;
- 57 (2)(N) management of workload;
- 58 (2)(O) willingness to share proportionally the workload within the court or district, or regularly
- 59 accepting assignments;
- 60 (2)(P) issuance of opinions and orders without unnecessary delay; and
- 61 (2)(Q) ability and willingness to use the court's case management systems in all cases.

62

63 **(3) Standards of performance.**

64 **(3)(A) Survey of attorneys.**

65 (3)(A)(i) The Council shall measure satisfactory performance by a sample survey of the
66 attorneys appearing before the active senior judge or court commissioner during the period
67 for which the active senior judge or court commissioner is being evaluated. The Council
68 shall measure satisfactory performance based on the results of the final survey conducted
69 during a court commissioner's term of office, subject to the discretion of a court
70 commissioner serving an abbreviated initial term not to participate in a second survey under
71 Section (3)(A)(vi) of this rule.

72 (3)(A)(ii) **Survey scoring.** The survey shall be scored as follows.

73 (3)(A)(ii)(a) Each question of the attorney survey will have six possible responses:
74 Excellent, More Than Adequate, Adequate, Less Than Adequate, Inadequate, or No
75 Personal Knowledge. A favorable response is Excellent, More Than Adequate, or
76 Adequate.

77 (3)(A)(ii)(b) Each question shall be scored by dividing the total number of favorable
78 responses by the total number of all responses, excluding the "No Personal Knowledge"
79 responses. A satisfactory score for a question is achieved when the ratio of favorable
80 responses is 70% or greater.

81 (3)(A)(ii)(c) A court commissioner's performance is satisfactory if:

82 (3)(A)(ii)(c)(1) at least 75% of the questions have a satisfactory score; and

83 (3)(A)(ii)(c)(2) the favorable responses when divided by the total number of all
84 responses, excluding "No Personal Knowledge" responses, is 70% or greater.

85 (3)(A)(ii)(d) The Judicial Council shall determine whether the senior judge's survey
86 scores are satisfactory.

87 (3)(A)(iii) **Survey respondents.** The Administrative Office of the Courts shall identify as
88 potential respondents all lawyers who have appeared before the court commissioner during
89 the period for which the commissioner is being evaluated.

90 (3)(A)(iv) **Exclusion from survey respondents.**

91 (3)(A)(iv)(a) A lawyer who has been appointed as a judge or court commissioner
92 shall not be a respondent in the survey. A lawyer who is suspended or disbarred or who
93 has resigned under discipline shall not be a respondent in the survey.

94 (3)(A)(iv)(b) With the approval of the Management Committee, a court commissioner
95 may exclude an attorney from the list of respondents if the court commissioner believes
96 the attorney will not respond objectively to the survey.

97 (3)(A)(v) **Number of survey respondents.** The Surveyor shall identify 180 respondents
98 or all attorneys appearing before the court commissioner, whichever is less. All attorneys
99 who have appeared before the active senior judge shall be sent a survey questionnaire as
100 soon as possible after the hearing.

101 (3)(A)(vi) **Administration of the survey.** Court commissioners shall be the subject of a
102 survey approximately six months prior to the expiration of their term of office. Court
103 commissioners shall be the subject of a survey during the second year of each term of
104 office. Newly appointed court commissioners shall be the subject of a survey during the
105 second year of their term of office and, at their option, approximately six months prior to the
106 expiration of their term of office.

107 (3)(A)(vii) **Survey report.** The Surveyor shall provide to the subject of the survey, the
108 subject's presiding judge, and the Judicial Council the number and percentage of
109 respondents for each of the possible responses on each survey question and all comments,
110 retyped and edited as necessary to redact the respondent's identity.

111 (3)(B) **Non-attorney surveys.**

112 (3)(B)(i) **Surveys of presiding judges and court staff regarding non-appellate
113 senior judges.** The Council shall measure performance of active senior judges by a survey
114 of all presiding judges and trial court executives, or in the justice courts, the Justice Court
115 Administrator, of districts in which the senior judge has been assigned. The presiding judge
116 and trial court executive will gather information for the survey from anonymous
117 questionnaires completed by court staff on the calendars to which the senior judge is
118 assigned and by jurors on jury trials to which the senior judge is assigned. The
119 Administrative Office of the Courts shall distribute survey forms with instructions to return
120 completed surveys to the Surveyor. The survey questions will be based on the non-legal
121 ability evaluation criteria in paragraph (2). The Surveyor shall provide to the subject of the
122 survey, the subject's presiding judge, and the Judicial Council the responses on each survey
123 question. The Judicial Council shall determine whether the qualitative assessment of the
124 senior judge indicates satisfactory performance.

125 (3)(B)(ii) **Surveys of Court of Appeals presiding judge and clerk of court.** The
126 Council shall measure performance of active appellate senior judges by a survey of the
127 presiding judge and clerk of court of the Court of Appeals. The presiding judge and clerk of
128 court will gather information for the survey from anonymous questionnaires completed by
129 the other judges on each panel to which the appellate senior judge is assigned and by the
130 appellate law clerks with whom the appellate senior judge works. The Administrative Office

131 of the Courts shall distribute the survey forms with instructions to return completed surveys
132 to the Surveyor. The survey questions will be based on the non-legal ability evaluation
133 criteria in paragraph (2). The Surveyor shall provide to the subject of the survey, the
134 subject's presiding judge, and the Judicial Council the responses on each survey question.
135 The Judicial Council shall determine whether the qualitative assessment of the senior judge
136 indicates satisfactory performance.

137 **(3)(C) Case under advisement standard.**

138 (3)(C)(i) A case is considered to be under advisement when the entire case or any issue in
139 the case has been submitted to the senior judge or court commissioner for final determination.
140 For purposes of this rule, "submitted to the senior judge or court commissioner" or "submission"
141 is defined as follows:

142 (3)(C)(i)(a) When a matter requiring attention is placed by staff in the senior judge's or
143 court commissioner's personal electronic queue, inbox, personal possession, or equivalent;

144 (3)(C)(i)(b) If a hearing or oral argument is set, at the conclusion of all hearings or oral
145 argument held on the specific motion or matter; or

146 (3)(C)(i)(c) If further briefing is required after a hearing or oral argument, when all
147 permitted briefing is completed, a request to submit is filed, if required, and the matter is
148 placed by staff in the senior judge's or court commissioner's personal electronic queue,
149 inbox, personal possession, or equivalent.

150 A case is no longer under advisement when the senior judge or court commissioner makes a
151 decision on the issue that is under advisement or on the entire case.

152 (3)(C)(ii) The Council shall measure satisfactory performance by the self-declaration of the
153 senior judge or court commissioner or by reviewing the records of the court.

154 (3)(C)(iii) A senior judge or court commissioner in a trial court demonstrates satisfactory
155 performance by holding:

156 (3)(C)(iii)(a) no more than three cases per calendar year under advisement more
157 than two months after submission; and

158 (3)(C)(iii)(b) no case under advisement more than 180 days after submission.

159 (3)(C)(iv) A senior judge in the court of appeals demonstrates satisfactory performance by:

160 (3)(C)(iv)(a) circulating no more than an average of three principal opinions per
161 calendar year more than six months after submission with no more than half of the
162 maximum exceptional cases in any one calendar year; and

163 (3)(C)(iv)(b) achieving a final average time to circulation of a principal opinion of no
164 more than 120 days after submission.

165 **(3)(D) Compliance with education standards.** Satisfactory performance is established if
166 the senior judge or court commissioner annually complies with the judicial education standards
167 of this Code, subject to the availability of in-state education programs. The Council shall
168 measure satisfactory performance by the self-declaration of the senior judge or court
169 commissioner or by reviewing the records of the state court administrator.

170 **(3)(E) Substantial compliance with Code of Judicial Conduct.** Satisfactory performance
171 is established if the response of the senior judge or court commissioner demonstrates
172 substantial compliance with the Code of Judicial Conduct, if the Council finds the responsive
173 information to be complete and correct and if the Council's review of formal and informal
174 sanctions lead the Council to conclude the court commissioner is in substantial compliance with

175 the Code of Judicial Conduct. Under Rule 11-201 and Rule 11-203, any sanction of a senior
176 judge disqualifies the senior judge from reappointment.

177 (3)(F) **Physical and mental competence.** Satisfactory performance is established if the
178 response of the senior judge or court commissioner demonstrates physical and mental
179 competence to serve in office and if the Council finds the responsive information to be complete
180 and correct. The Council may request a statement by an examining physician.

181 (3)(G) **Performance and corrective action plans for court commissioners.**

182 (3)(G)(i) The presiding judge of the district a court commissioner serves shall prepare a
183 performance plan for a new court commissioner within 30 days of the court commissioner's
184 appointment. If a court commissioner serves multiple districts or court levels, the presiding
185 judge of each district and court level shall prepare a performance plan. The performance
186 plan shall communicate the expectations set forth in paragraph (2) of this rule.

187 (3)(G)(ii) If a presiding judge issues an overall "Needs Improvement" rating on a court
188 commissioner's annual performance evaluation as provided in paragraph (1), that presiding
189 judge shall prepare a corrective action plan setting forth specific ways in which the court
190 commissioner can improve in deficient areas.

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192 (4) **Judicial Council certification process**

193 (4)(A) **July Council meeting.** At its meeting in July, the Council shall begin the process of
194 determining whether the senior judges and court commissioners whose terms of office expire
195 that year meet the standards of performance provided for in this rule. The Administrative Office
196 of the Courts shall assemble all evaluation information, including:

197 (4)(A)(i) survey scores;

198 (4)(A)(ii) judicial education records;

199 (4)(A)(iii) self-declaration forms;

200 (4)(A)(iv) records of formal and informal sanctions;

201 (4)(A)(v) performance evaluations, if the commissioner or senior judge received an
202 overall rating of Needs Improvement; and

203 (4)(A)(vi) any information requested by the Council.

204 (4)(B) **Records delivery.** Prior to the meeting the Administrative Office of the Courts shall
205 deliver the records to the Council and to the senior judges and court commissioners being
206 evaluated.

207 (4)(C) **July Council meeting closed session.** In a session closed in compliance with Rule
208 2-103, the Council shall consider the evaluation information and make a preliminary finding of
209 whether a senior judge or court commissioner has met the performance standards.

210 (4)(D) **Certification presumptions.** If the Council finds the senior judge or court
211 commissioner has met the performance standards, it is presumed the Council will certify the
212 senior judge or court commissioner for reappointment. If the Council finds the senior judge or
213 court commissioner did not meet the performance standards, it is presumed the Council will not
214 certify the senior judge or court commissioner for reappointment. The Council may certify the
215 senior judge or court commissioner or withhold decision until after meeting with the senior judge
216 or court commissioner.

217 (4)(E) **Overcoming presumptions.** A presumption against certification may be overcome
218 | by a showing ~~of good cause to the contrary~~ that a senior judge's or court commissioner's failure

219 | to comply with paragraphs (3)(C) and (3)(D) were beyond the senior judge's or court
220 | commissioner's personal control. A presumption in favor of certification may be overcome by:

221 | (4)(E)(i) reliable information showing non-compliance with a performance standard,
222 | except as otherwise provided in paragraph (4)(E); or

223 | (4)(E)(ii) formal or informal sanctions of sufficient gravity or number or both to
224 | demonstrate lack of substantial compliance with the Code of Judicial Conduct.

225 | (4)(F) **August Council meeting.** At the request of the Council the senior judge or court
226 | commissioner challenging a non-certification decision shall meet with the Council in August. At
227 | the request of the Council the presiding judge shall report to the Council any meetings held with
228 | the senior judge or court commissioner, the steps toward self-improvement identified as a result
229 | of those meetings, and the efforts to complete those steps. Not later than 5 days after the July
230 | meeting, the Administrative Office of the Courts shall deliver to the senior judge or court
231 | commissioner being evaluated notice of the Council's action and any records not already
232 | delivered to the senior judge or court commissioner. The notice shall contain an adequate
233 | description of the reasons the Council has withheld its decision and the date by which the senior
234 | judge or court commissioner is to deliver written materials. The Administrative Office of the
235 | Courts shall deliver copies of all materials to the Council and to the senior judge or court
236 | commissioner prior to the August meeting.

237 | (4)(G) **August Council meeting closed session.** At its August meeting in a session closed
238 | in accordance with Rule 2-103, the Council shall provide to the senior judge or court
239 | commissioner adequate time to present evidence and arguments in favor of certification. Any
240 | member of the Council may present evidence and arguments of which the senior judge or court
241 | commissioner has had notice opposed to certification. The burden is on the person arguing
242 | against the presumed certification. The Council may determine the order of presentation.

243 | (4)(H) **Final certification decision.** At its August meeting in open session, the Council shall
244 | approve its final findings and certification regarding all senior judges and court commissioners
245 | whose terms of office expire that year.

246 | (4)(I) **Communication of certification decision.** The Judicial Council shall communicate its
247 | certification decision to the senior judge or court commissioner. The Judicial Council shall
248 | communicate its certification decision for senior judges to the Supreme Court and for court
249 | commissioners to the presiding judge of the district the commissioner serves.

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251 | *Effective November 1, 2020*